

NOV 25 2009

IN THE UNITED STATES DISTRICT COURT JOHN F. CORCORAN, CLERK
FOR THE WESTERN DISTRICT OF VIRGINIA BY: *S. Taylor*
ROANOKE DIVISION DEPUTY CLERK

KENNETH EDWARD BARBOUR,)	Civil Action No. 7:09-cv-00480
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
REPRESENTATIVES OF THE)	
PERSONS ASST. WARDEN)	
HARVEY,)	By: Hon. James C. Turk
Defendant.)	Senior United States District Judge

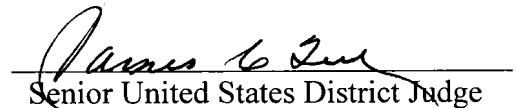
Plaintiff Kenneth Barbour, a Virginia inmate proceeding pro se, filed a civil rights complaint, pursuant to 42 U.S.C. § 1983 with jurisdiction vested in 28 U.S.C. § 1333. Plaintiff did not submit payment for the \$350 filing fee with his complaint. See 28 U.S.C. § 1914(a). Plaintiff had at least three non-habeas civil complaints or appeals previously dismissed as frivolous or for failing to state a claim upon which relief may be granted. See, e.g., Barbour v. Virginia Department of Corrections, et al., 7:09-cv-00091 (W.D. Va. 2009); Barbour v. Virginia Department of Corrections, 7:09-cv-00083 (W.D. Va. 2009); Barbour v. Stanford, et al., 7:09-cv-00077 (W.D. Va. 2009).

In accordance with the three-strikes provision of 28 U.S.C. § 1915(g), the court previously advised plaintiff that he needed to submit the \$350.00 filing fee or establish an imminent threat of serious physical harm to proceed with a civil suit. See, e.g., Barbour v. Keeffe Commissaries at VDOC's, No. 7:09-cv-00154 (W.D. Va. May 12, 2009). After reviewing plaintiff's submissions in this civil action, it is clear that plaintiff does not allege any facts indicating that he is currently under any imminent threat of any serious physical injury within the meaning of 28 U.S.C. § 1915(g). Based on the foregoing and the complaint, the court finds that plaintiff has failed to demonstrate any imminent danger of serious physical harm in the

complaint and plaintiff has not paid the \$350.00 filing fee despite being previously advised of having three strikes. See 28 U.S.C. § 1914(a). Accordingly, the court dismisses the complaint without prejudice for failure to pay the filing fee at the time of filing the complaint.

The Clerk is directed to send copies of this memorandum opinion and the accompanying order to the plaintiff.

ENTER: This 25th day of November, 2009.



Senior United States District Judge